



Administrative Committee

Decision governing the financial management of the Unified Patent Court during the period of provisional application of the Agreement on a Unified Patent Court

Luxembourg, 22 February 2022

Executive Summary

The Administrative Committee of the Unified Patent Court shall adopt a Decision governing the financial management of the Unified Patent Court (UPC) during the period of provisional application of the Agreement on the UPC, in accordance with Article 33 of the Statute of the Unified Patent Court which is rendered applicable by Article 1 of the Protocol to the Agreement on a Unified Patent Court on provisional application.

The draft decision submitted in this document contains a proposal for such a Decision governing the financial management of the UPC during the period of provisional application of the Agreement. The Decision has been prepared by the Chairman of the Preparatory Committee with the involvement of participating Member States. The Decision has been presented to and discussed by the Preparatory Committee of the UPC at various occasions and finally approved at its 18th meeting on 10 October 2016 on the basis of document PC/O2/Oct2016. In the course of the finalisation of the budget for the period of provisional application, some necessary amendments have been proposed by the Finance Working Group which relate to Articles 3(3), 4(3) (deletion), 6, 10, 11(b), 13, 18, 23 and 26. Due to time constraints, this text will exceptionally be adopted in English only.

Résumé

Le Comité administratif de la Juridiction Unifiée du Brevet (JUB) adopte la décision relative aux modalités financières de la JUB pour la période d'application provisoire conformément à l'article 33 des statuts de la Juridiction Unifiée du Brevet, lequel est rendu applicable par l'article 1^{er} du protocole relatif à la période d'application provisoire de l'Accord relatif à la Juridiction Unifiée du Brevet.

Le projet de décision présenté dans le présent document contient la proposition d'une telle décision régissant la gestion financière de la JUB durant la période d'application provisoire. La décision a été préparée par le président du Comité Préparatoire avec la contribution des Etats membres participants. La décision a été présentée au Comité préparatoire de la Juridiction Unifiée du Brevet qui en a délibéré à plusieurs occasions et l'a finalement approuvée à sa 18^{ème} réunion en date du 10 octobre 2016 sur la base du document PC/O2/Oct 2016. Dans le cadre de la finalisation du budget applicable à la période d'Application Provisoire, quelques nécessaires amendements sont proposés par le Groupe de Travail Financier concernant les articles 3 (3), 4(3) (suppression), 6, 10, 11(b), 13, 18 et 23. Pour des contraintes de temps, ce texte sera exceptionnellement adopté en anglais seulement.

Kurze Zusammenfassung

Gemäß Artikel 33 der Satzung des Einheitlichen Patentgerichts, der nach Artikel 1 des Protokolls zum Übereinkommen über ein Einheitliches Patentgericht (EPG) betreffend die vorläufige Anwendung vorläufig anzuwenden ist, hat der Verwaltungsausschuss Regeln über die Finanzverwaltung des EPG während des Zeitraums der vorläufigen Anwendung des Übereinkommens zu erlassen.

Der mit diesem Dokument vorgelegte Beschlussentwurf enthält einen Vorschlag für einen solchen Beschluss, der die Finanzverwaltung des EPG während der vorläufigen Anwendung des Übereinkommens regelt. Der Beschlussentwurf wurde vom Vorsitzenden des Vorbereitenden Ausschusses unter Mitwirkung der teilnehmenden Mitgliedstaaten ausgearbeitet. Der Beschluss wurde dem Vorbereitenden Ausschuss des EPG bei verschiedenen Gelegenheiten vorgelegt, von diesem erörtert und schließlich auf seiner 18. Sitzung am 10. Oktober 2016 auf der Grundlage des Dokuments PC/02/Oct2016 gebilligt. Im Zuge der Fertigstellung des Haushaltsplans für den Zeitraum der vorläufigen Anwendung hat die Arbeitsgruppe Finanzen des Vorbereitenden Ausschusses einige notwendige Änderungen vorgeschlagen, die sich auf Artikel 3 Absatz 3, Artikel 4 Absatz 3 (Streichung), Artikel 6, Artikel 10, Artikel 11 Buchstabe b, Artikel 13, Artikel 18, Artikel 23 und Artikel 26 beziehen. Aus Zeitgründen wird dieser Text ausnahmsweise nur auf Englisch beschlossen.

| DECISION OF THE ADMINISTRATIVE COMMITTEE | DECISION DU COMITE ADMINISTRATIF | ENTSCHEIDUNG DES VERWALTUNGS-AUSSCHUSSES |
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| <p>of 22 February 2022 adopting the Decision governing the financial management of the Unified Patent Court during the period of provisional application of the Agreement on the Unified Patent Court.</p> | <p>du 22 février 2022 adoptant la décision régissant la gestion financière de la Juridiction Unifiée du Brevet durant la période d'application provisoire de l'Accord relatif à la Juridiction Unifiée du Brevet</p> | <p>vom 22. Februar 2022 über die Annahme des Beschlusses über die Finanzverwaltung des Einheitlichen Patentgerichts während des Zeitraums der vorläufigen Anwendung des Übereinkommens über ein Einheitliches Patentgericht.</p> |
| <p>THE ADMINISTRATIVE COMMITTEE of the Unified Patent Court, Having regard to the Statute of the Unified Patent Court, in particular Article 33 thereof,</p> | <p>LE COMITE ADMINISTRATIF de la Juridiction unifiée du brevet Vu les statuts de la Juridiction Unifiée du Brevet, notamment son article 33,</p> | <p>DER VERWALTUNGS-AUSSCHUSS des Einheitlichen Patentgerichts, gestützt auf die Satzung des Einheitlichen Patentgerichts, insbesondere auf Artikel 33,</p> |
| <p>HAS DECIDED AS FOLLOWS: Decision governing the financial management of the Unified Patent Court during the period of provisional application of the Agreement on the Unified Patent Court.</p> | <p>ADOpte CE QUI SUIT: Décision régissant la gestion financière de la Juridiction Unifiée du Brevet durant la période d'application provisoire de l'Accord relatif à une Juridiction Unifiée du Brevet.</p> | <p>HAT WIE FOLGT BESCHLOSSEN: Beschluss über die Finanzverwaltung des Einheitlichen Patentgerichts während des Zeitraums der vorläufigen Anwendung des Übereinkommens über ein Einheitliches Patentgericht.</p> |
| <p>Done at Luxembourg, the 22 February 2022 For the Administrative Committee</p> | <p>Fait à Luxembourg, le 22 février 2022 Pour le Comité Administratif</p> | <p>Geschehen zu Luxemburg am 22. Februar 2022 Für den Verwaltungsausschuss</p> |
| <p>The Chairperson</p> | <p>La Présidente / Le Président</p> | <p>Der Vorsitzende / Die Vorsitzende</p> |

DECISION
OF THE ADMINISTRATIVE COMMITTEE
GOVERNING THE FINANCIAL MANAGEMENT
OF THE UNIFIED PATENT COURT
DURING THE PERIOD OF PROVISIONAL APPLICATION
OF THE AGREEMENT ON A UNIFIED PATENT COURT

Article 1 Definitions

For the purpose of this decision:

- a) “Court” means the Unified Patent Court;
- b) “Agreement” means the Agreement on a Unified Patent Court signed on 19 February 2013;
- c) “Statute” means the Statute of the Unified Patent Court as set out in Annex I of the Agreement;
- d) “Presidium” means the Presidium of the Court;
- e) “Registrar” and “Deputy-Registrar” means the Registrar and Deputy-registrar of the Court;
- f) “Budget Committee” means the Budget Committee of the Court;
- g) “Administrative Committee” means the Administrative Committee of the Court;
- h) “Period of provisional application” mean the period of provisional application of the Agreement on a Unified Patent Court, in accordance with the Protocol to the Agreement on a Unified Patent Court on Provisional Application;
- i) “Authorising officer” means the person responsible for the management of commitment and payment appropriations, having the sole power to commit expenditure, establish debts to be recovered and issue receipt orders and payment orders;
- j) “Accounting officer” means the person responsible for keeping the accounts and executing receipt and payment orders issued by the authorising officer;
- k) Financial Regulations means the Financial Regulations of Court, as adopted by the Administrative Committee.

Article 2

Subject-matter

- (1) This decision shall govern the financial management of the Court during the period of provisional application of the Agreement.
- (2) This decision shall be limited to the management of the budget and the accounts of the Court. It does not cover the obligations borne by Contracting Member States hosting a local or regional division or a section or the seat of the central division or the Court of Appeal pursuant to Article 37(1) of the Agreement.
- (3) The Financial Regulations of the Court shall not be applicable to the period of Provisional Application except where explicitly stated.

Article 3

Principle of sound financial management

- (1) The financial administration of the Court shall be conducted in accordance with the principles of economy and sound financial management, as per Article 2 of the Financial Regulations.
- (2) The general accepted accounting principles applied, as per Articles 26(1) and 33(2)(d) of the Statute, shall be the International Public Service Accountancy Standards (IPSAS).
- (3) At the latest at the end of the period of provisional application, the Administrative Committee shall discharge the chairpersons of the Administrative Committee and of the Budget Committee.

Article 4

Authorising and accounting officers during the period of provisional application

- (1) During the period of provisional application, the function of authorising officer shall be assumed by the Chairperson of the Administrative Committee, until the Presidium is constituted, at which point it shall take the role of authorising officer, in accordance with Article 1(3) of the Financial Regulations.
- (2) During the period of provisional application, the function of accounting officer shall be assumed by the Chairperson of the Budget Committee, until the Registrar is appointed, at which point he or she shall take the role of accounting officer in accordance with Article 65 of the Financial Regulations.

Article 5 Functions of the Budget Committee

In accordance with Article 1 of the Protocol on Provisional Application of the Agreement, the Budget Committee shall, as of the date of provisional application of the Agreement, exercise the functions entrusted to it by the Agreement and the Statute.

Article 6 Contributions of Contracting Member States

- (1) Contracting Member States provisionally applying the Agreement shall make the following types of contributions during the period of provisional application:
 - a) Initial financial contributions provided for in Article 37 paragraph 2 of the Agreement shall cover all costs necessary to establish a functional Court¹, incurred either by Member States' advanced contributions as approved by the Preparatory Committee or by the Administrative Committee or by the Court itself before the entry into force of the Agreement;
 - b) Contributions to the Working Capital Fund;
 - c) Contributions to the operating costs of the Court for the first accounting period following the entry into force of the Agreement.
- (2) Advances regarding the initial financial contributions incurred by Member States as approved by the Preparatory Committee shall be reimbursed in full to the contributing Member States by the end of the provisional application period.
- (3) Contributions under paragraph (1)(a) shall be made by the Contracting Member States at the latest six weeks after the date on which the calls for contributions are sent by the

¹ The costs necessary to establish a functional Court relate in particular to:

- costs for establishing the Court's IT systems, the website, the Patent Mediation and Arbitration Centre and the training framework,
- remuneration of the judges, the registrar and the deputy-registrar during the provisional application period,
- the costs of travel and accommodation of the members of the Advisory Committee (in particular to hold interviews),
- costs for the meetings of the Administrative Committee and the Budget Committee,
- costs for consultancy, communication, translation, insurance,
- the purchase of goods for the purposes of the activities of the Court (e.g. gowns, eLibrary etc)
- etc.

chairperson of the Budget Committee under Article 7. If a Contracting Member State joins at a later date, these contributions shall be made at the latest four weeks after accession to the provisional application.

- (4) Contributions under paragraph (1)(b) and (c) shall be made by Contracting Member States at the latest three months before the envisaged entry into force of the Agreement.
- (5) All contributions under paragraph 1 shall be made in Euros and shall be made by bank transfer to the Court's bank account as approved and communicated to the Contracting Member States by the Chairperson of the Budget Committee.

Article 7

Duties of the Chairperson of the Budget Committee relating to the management of contributions by Contracting Member States

- (1) After the adoption of the budget for the period of provisional application, the Chairperson of the Budget Committee shall communicate to the Contracting Member States for which the Agreement is provisionally applicable, the amount of any financial contributions that are payable pursuant to Article 6.
- (2) The Chairperson of the Budget Committee shall draw up every month and submit to the Chair of the Administrative Committee a statement setting out the contributions made by the Contracting Member States as well as the contributions still outstanding.

Article 8

Late payments of contributions

On a proposal of the Budget Committee, the Administrative Committee may decide that late payment of contributions may be subject to the payment of interest on the balance of contribution. In case payment is delayed for more than two months, the voting rights of the Contracting Member State concerned may be suspended in all committees of the Court by decision of the Administrative Committee until the payment is made.²

Article 9

² In view of the importance of timely payments in the provisional application period, it seems necessary to provide that voting rights may be suspended even in case of a delay of two months. Article 13(2) of the Financial Regulations – which provides for suspension of voting rights in case of delay of more than 1 year – would not be of any use in the provisional period.

Accounting period

The accounting period of the period of provisional application shall begin on the date on which the Agreement applies provisionally, in accordance with the Protocol on Provisional Application of the Agreement on a Unified Patent Court. It shall end at the same time as the period of provisional application.

Article 10

Adoption of the budget

The budget for the period of provisional application shall be adopted by the Budget Committee in its inaugural meeting.

Article 11

Content of the budget for the period of provisional application

The budget for the period of provisional application shall be presented in Euro and shall consist of

- a) a detailed statement of resources to be allocated in various headings and subheadings detailing the expenditures foreseen for the period of provisional application regarding the following matters, in particular:
 - (i) salaries of
 - the President of the Court of Appeal,
 - the President of the Court of First Instance,
 - the other judges,
 - the Registrar and the Deputy-Registrar(as far as the latter have been appointed and have taken up their respective activities)
as well as the salaries of any other staff directly employed by the Court;
 - (ii) pension and social security contributions of
 - the President of the Court of Appeal,
 - the President of the Court of First Instance,
 - the other judges,
 - the Registrar and the Deputy-Registrar

(as far as they have been appointed and have taken up their respective activities),

as well as the pension and social security contributions of any other staff directly employed by the Court;

- (iii) costs incurred by the Committees of the Court including cost of meetings, as well as translation and communication costs;
- (iv) costs incurred for setting up the Court, the Training Centre for Judges and the Patent Mediation and Arbitration Centre, in particular the initial assets of the Court;
- (v) resources to be allocated to the Working Capital Fund.

b) a statement of the estimated income which shall consist of, in particular:

- (i) the initial financial contributions, with separate accounts for each contributing Member State;
- (ii) contributions to the Working Capital;
- (iii) any other income of the Court.

Article 12

Supplementary budget

- (1) Supplementary budget proposals may be prepared by the Chairperson of the Administrative Committee if exceptional circumstances make it necessary. They shall be prepared in a form consistent with the approved budget. The provisions of this decision shall apply *mutatis mutandis* to the proposed supplementary budget.
- (2) Supplementary budget proposals may be submitted in the following instances, in particular:
 - (i) when, in the interest of the administration of justice, urgent approval is required;
 - (ii) when they include activities which the Chairperson of the Administrative Committee considers to be of the highest urgency and which could not have been foreseen at the time the initial budget proposals were prepared.

Article 13

Implementation of the budget – general principles

- (1) According to Article 17 of the Financial Regulations, all income shall be available to cover all expenditures.
- (2) According to Article 18 of the Financial Regulations, every item of income or expenditure must be attributed to a budget heading.

- (3) The result of the Pension and Social security schemes (PSSS) shall be presented separately. Surpluses shall be maintained in the PSSS whereas in case of deficit a Decision how to compensate is required.

Article 14

Appropriations

- (1) In accordance with Article 29 of the Financial Regulations, the adoption of the budget for the period of provisional application by the Budget Committee shall constitute:
- a) an obligation on the part of the Contracting Member States to make the requisite advances, contributions and payments;
 - b) an authorisation for the Chairperson of the Administrative Committee and of the Budget Committee within the limits of their respective competences to commit expenditure and make payments, within the limits of the appropriations.
- (2) It shall be differentiated between:
- a) Commitment appropriations, which shall constitute the maximum expenditure which the Chairperson of the Administrative Committee may commit during the current accounting period. In cases specified in the budget, commitments may extend beyond that accounting period.
 - b) Payment appropriations, which shall constitute the maximum expenditure which the Chairperson of the Administrative Committee may authorise and pay during the accounting period in respect of commitments entered into during that accounting period.

Article 15

Separation of powers between authorising and accounting officers

The separation of power between authorising and accounting officer shall be governed by Article 19 of the Financial Regulations.

Article 16

General account

There shall be established a general account for the purpose of accounting for the administrative expenditures of the Court. The contributions by Contracting Member States,

miscellaneous income and any advances made from the Working Capital Fund to finance administrative expenditures shall be credited to the general account.

Article 17

Working Capital Fund

Article 63 of the Financial Regulations shall apply *mutatis mutandis* to the establishment and use of a Working Capital Fund during the period of provisional application.

Article 18

Bank accounts, authority and policy

- (1) The Chairperson of the Budget Committee shall designate a reputable bank in which the funds of the Court shall be kept. He shall establish an official bank account required for the transaction of the Court's business. For the social security and pension schemes, a separate bank account shall be established which shall be used for all financial transactions affecting the schemes (incoming payments: monthly contributions received by the UPC and staff to the schemes, and outgoing payments: insurance benefits paid by the schemes for its members).
- (2) The Court's bank accounts are to be opened and operated in accordance with the following guidelines:
 - a) the bank accounts shall be designated "official accounts of the Unified Patent Court";³
 - b) the bank shall be required to provide monthly statements promptly;
 - c) the signature of the authorising officer or the person to whom he has delegated his power of signature shall be required on all cheques and other withdrawal instructions, including electronic modes of payment, in accordance with Article 20;
 - d) until the Presidium is formed and the Registrar is appointed, the bank shall be required to recognize that the Chairperson of the Administrative Committee and the Chairperson of the Budget Committee, as authorized to receive, upon request and as promptly as practicable, all information pertaining to official bank account of the Court.

Article 19

³ The relevant authority shall be notified that those accounts are exempt from all taxation.

Bank signatories

Bank signatory authority and responsibility is assigned to the accounting officer or to the person to whom the accounting officer has delegated his power of signature during the period of provisional application. Designated bank signatories must:

- a) ensure that there are sufficient funds in the bank account when cheques and other payment instructions are presented for payment;
- b) verify that all cheques and other payment instructions are pre-encumbered, dated and drawn to the order of the named payee approved by an authorising officer as indicated in the accompanying payment order and original invoice;
- c) ensure that cheques and other banking instruments are properly safeguarded and that when they are obsolete they are destroyed in the presence of two officials designated for that purpose by the Chairperson of the Budget Committee.

Article 20

Receipts

- (1) An official receipt shall be issued as soon as practicable for all cash and negotiable instruments received.
- (2) Only the accounting officer and the person to whom he has delegated this duty shall be authorized to issue official receipts. If other officials receive money intended for the Court, they must immediately convey this money to the accounting officer.
- (3) All moneys received shall be deposited in an official bank account as soon as practicable.

Article 21

Payments

- (1) All payments shall be made by transfer to the Court's bank account.
- (2) Payments shall be recorded in the accounts as of the date when they are made. The date on which a payment shall be considered to have been made to the Court shall be the date on which the amount of the payment or of the transfer is actually entered in a bank account held by the Court.

Article 22

Authorisation and confirmation

Commitments and expenditures require the signature of the authorising officer or the person to whom the authorising officer has delegated his power of signature for the period of provisional application.

Article 23 Accounts

The accounts of the Court shall include detailed, comprehensive and up-to-date records of assets and liabilities for all sources of funds.

- (1) The accounts shall consist of:
 - a) Programme budget accounts, showing:
 - (i) original appropriations;
 - (ii) appropriations as modified by transfers;
 - (iii) credits;
 - (iv) expenditures, including payments and other disbursements and unliquidated obligations;
 - (v) unencumbered balances of appropriations.
 - b) the Working Capital Fund.
- (2) Separate accounts have to be maintained for all income and expenditure associated with the Pension and Social security schemes (PSSS). No income and expenditure of the PSSS shall be transferred to the Court.
- (3) All financial transactions shall be recorded in the accounts on an accrual basis.

Article 24

Financial statements

The Financial statements of the Court under Article 26(4) of the Statute shall be prepared in accordance with Article 68 of the Financial Regulations.

Article 25

Audit of the accounts

- (1) The auditing of the accounts shall be done in accordance with Article 32 of the Statute.
- (2) During the period of provisional application, the Budget Committee shall appoint only one auditor which shall be employed only for this period.

(3) The auditor can be reappointed after the entry into force of the Agreement, under Article 70 of the Financial Regulations.

Article 26
Entry into force

This decision shall enter into force on the date when the Agreement becomes provisionally applicable and shall cease to have effect when the Agreement enters into force.

Article 27
Amendments

The Budget Committee may propose amendments of the present decision to the Administrative Committee which shall decide on the adoption of the proposed amendments.